IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 363 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESHBHAI BABUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 363 of 2001

MR SURESH S PATEL for Petitioners No. 1-2

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 03/10/2001

ORAL JUDGEMENT

#. This Revision Application is filed against an order passed by the learned Judicial Magistrate First Class, Dehgam on 25.7.2001 rejecting the application of the present petitioners filed at Ex.6 for discharging them for the offences punishable under Sections 325 and 326 of

the Indian Penal Code.

#. The facts disclose that against the present petitioners on 27.9.2000 at 4:00 P.M. a complaint was filed by complainant viz. Kailashben Kehuji Fatehsinh before Dehgam Police Station, wherein it was stated that on 27.9.2000 at about 14:00 hours the complainant Kailashben and Rajanben, both had been to the Sim of village Rathod, and after cutting grass and collecting the same, while were returning towards the village the accused met them near the field of their father Babubhai and a quarrel took place, because the accused alleged the complainant and her sister that they had collected grass from their field. During this quarrel, as stated by the complainant, accused Saileshbhai inflicted a blow of Dharia below left knee of the complainant on the left leg. Other accused also inflicted stick blows to the complainant including the left leg knee joint also. Thereafter, a charge-sheet under Sections 325 and 326 of the Indian Penal Code was filed by the police against the accused in the Court of learned Judicial Magistrate First Class, Dehgam. The facts disclose that the accused were produced before the learned Judicial Magistrate First Class on 3.10.2000 vide yadi and on the same day the Investigating Officer also supported by an affidavit, declared vide yadi that the offence was under Section 325 and 326 of the Indian Penal Code and it was requested to add these two sections in the yadi. In the affidavit of the Investigating Officer, it was stated that at the relevant juncture the Medical Certificate was not available and, therefore, affidavit was filed. The accused were released on bail by the Court of Sessions on 6.10.2000 for the offences under Sections 325 and 326 of the Indian Penal Code.

#. On filing the charge-sheet, the accused persons preferred an application Ex.6 before the learned Judicial Magistrate First Class, Dehgam under Section 239 of the Criminal Procedure code to discharge them for the offences charged against them under Sections 325 and 326 of the Indian Penal Code. It was urged on behalf of the applicants that on 3.10.2000 Investigating Officer filed a yadi before the learned Magistrate for adding of Section 325 and on 4.10.2000 Investigating Officer also filed a yadi before learned Judicial Magistrate First Class to add Section 326. The accused also produced a certificate of Ahmedabad Civil Hospital dated 11.10.2000 wherein there was no mention of a fracture injury, while the Medical Certificate produced alongwith the charge-sheet which is dated 13.10.2000, disclosed the fracture of the left leg of the complainant. Therefore,

to make out false case against the accused in the application, false certificate was obtained by the Investigating Officer on 13.10.2000 because there was mention of the injury on 11.10.2000 and, therefore, the accused may be discharged for the offences charged against them under Sections 325 and 326 of the Indian Penal Code. The application came to be rejected by the learned Magistrate on the ground that firstly, the police did not rely on the certificate dated 11.10.2000, which was not part and parcel of the charge-sheet papers. Secondly, the medical certificate dated 13.10.2000 discloses injury of fracture inviting the charges under Sections 325 and 326 of the Indian Penal Code and, hence, the application for discharge came to be dismissed by the learned Magistrate on 25.7.2001. Hence, this Revision Application.

#. Learned advocate Mr.S.S.Patel, for the applicant - original accused and learned APP Mr.B.Y.Mankad, for the State were heard.

#. Learned advocate Mr.S.S.Patel placed reliance on medical certificate dated 11.10.2000 issued by the Medical Officer, Civil Hospital, in respect of the injury caused to the complainant. It was stated that the injuries are clear; that there was no fracture when complainant was examined by the Medical Officer on 27.9.2000 at 10:20 P.M. However, it was urged that with a view to involve the accused in graver offence, the Investigating Officer managed to have certificate dated 13.10.2000 which is placed on record at page-18 of this compilation where the fracture of tibia fibulae was found and date of examination of the complainant was the same i.e. on 27.9.2000 at 10:20 P.M. Learned advocate for the petitioners stated that these are the suspicious circumstances that the certificate which is dated 13.10.2000 and has been included in the charge-sheet paper, is managed by the prosecution to aggravate the offence against the accused. It was urged that this is more so because when the accused were produced on 3.10.2000 before the learned Magistrate it was disclosed by a yadi that in fact the offence under Section 325 of the Indian Penal Code was committed and the same be added against the accused. Thereafter, on the same day, it was stated by the Investigating officer vide yadi that in fact, the offence of Section 326 was disclosed and an affidavit was accompanied by this yadi which denoted that the Medical Certificate was not available and he declared the fact that there was a fracture detected of the left leg of the complainant. On these circumstances, it was urged that it is more likely that the certificate dated

13.10.2000 was managed by the Investigating Officer because the earlier certificate dated 11.10.2000 issued by the same hospital on the same number did not disclose any injury of the fracture. It was urged that the learned Magistrate discarded this certificate dated 11.10.2000 from the consideration and rejected the application. It was urged that when there are suspicious circumstances of having committed a particular offence, the charge against the accused under Section 325 and 326 of the Indian Penal Code cannot be sustained and it was urged that order rejecting the application for discharge be quashed and accused be discharged as prayed for.

#. Learned APP Mr.B.Y.Mankad urged that a further statement of the complainant was recorded on 2.10.2000 by the Investigating Officer which is clearly stating that she was taken to the Ahmedabad Civil Hospital, where she was treated and a fracture was found in her left leg. It was also stated by her in the statement on 10.10.2000 that her leg was fractured. She has stated that she was indoor patient for 3 days in the hospital. It was urged by the learned APP that the prosecution relies on the certificate dated 13.10.2000 and it is not known as to how the accused obtained Certificate dated 11.10.2000 which is not a part and parcel of the investigation. On this ground, learned APP has urged that the learned Magistrate has not erred in passing the order.

#. Having regard to the papers available and rival contentions, it is clear that the controversy is regarding whether the charge under Sections 325 and 326 against the accused be framed or not. On accused side, reliance is placed on medical certificate which is produced at page-17 of this compilation which is dated 11.10.2000. However, this certificate is not part and parcel of the investigation papers. So far as the framing of the charge is concerned, learned Magistrate will have to look to the papers of investigation produced under Section 173 of the Criminal Procedure Code. If the learned Magistrate comes to the conclusion that there is a primafacie case to proceed against the accused, the learned Magistrate shall frame the charge for the offences disclosed during the investigation. By the certificate dated 13.10.2000 it is clear that the offence under Sections 325 and 326 of the Indian Penal Code was disclosed against the accused and the certificate dated 13.10.2000 was during the course of investigation was relied upon by the prosecution. At this juncture, it cannot be said that real injury certificate is a medical certificate as produced by the accused which is dated 11.10.2000 and that the certificate collected during the

investigation is wrong and has been managed. It may happen that the certificate which is in possession of the accused which is dated 11.10.2000 might have been managed. It all depends upon the recording of the evidence. But, from the investigating papers it clearly transpires that on the basis of the medical evidence i.e. Certificate dated 13.10.2000 and the statement of the witnesses, the offence under Section 325 and 326 of the Indian Penal Code is clearly disclosed. Whether there is a contradiction in the statement of the complainant and medical evidence, will have to be seen during the trial and when the Medical Officer issued certificate on 13.10.2000, will be examined by the prosecution and will have an opportunity to explain the circumstances. Before that, at this juncture, merely by the circumstances that Investigating Officer produced a yadi and affidavit without supporting Medical Certificate, it cannot be ruled that the production of certificate thereafter was suspicious. It cannot also be said that the Medical Certificate dated 13.10.2000 was managed by the Investigating Officer and there was contradiction between the Medical Certificate dated 13.10.2000 and further statement recorded by the Investigating Officer. Without recording the evidence in the matter, the Medical Certificate, on which the prosecution relies upon, cannot be discarded because some other Certificate is issued earlier i.e. on 10.10.2000 by the Medical officer of the same hospital. At the most, the circumstances may be explained by the prosecution during the trial, but, at this juncture, by no stretch of reasoning, it can be concluded that the allegations for charges under Sections 325 and 326 of the Indian Penal Code for the reasons advanced by the accused, were baseless and that the certificate produced was managed because the same was not produced with the yadi requesting to add graver offence or that the injury was not mentioned in the certificate dated 11.10.2000, which certificate is in possession of the accused and was not collected during the course of investigation.

#. In this view of the matter, this Revision Application stands dismissed and rule is discharged.

(J. R. VORA, J.)

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